

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.Rev.Pet.No. 330 of 2007(A)

**CRA.20/2006 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE
ST.660/2003 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOZHIKODE**

.....

REVN. PETITIONER: APPELLANT/ACCUSED:

**M. VINAYAN, S/O.MANNATHUKANDY RAGHAVAN,
AGED 50 YEARS, 3/474 B, MANNATHKANDY,
KARIMPOIL PARAMBA, KORANKANDY ROAD,
KUNNAMANGALAM.**

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

-
- 1. K.U.GEEVARGHEESE, S/O.K.K. ULAHANNAN,
M2 6(A)76, K.S.H.B.COLONY,
MALAPARAMBA, CALICUT.**
 - 2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRLAMJATH

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

K.PADMANABHAN NAIR.J

Crl.R.P No.330 OF 2007

Dated this the 6th day of February 2007

ORDER

The accused in C.C. 660/2003 on the file of Judicial First class Magistrate Court-I Kozhikode is the revision petitioner. The revision petitioner was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced to undergo simple imprisonment for six months. He is also directed to pay compensation of Rs.1, 10,000/- to the complainant and in default of payment of compensation to undergo simple imprisonment for two more months. The petitioner filed Crl.Appeal No.20/2006 before the Additional District and Sessions Judge, Fast Track (Adhoc-I) Kozhikode. The learned Sessions Judge confirmed the conviction but modified the sentence. The substantive sentence was modified as imprisonment till the rising of the court. The compensation ordered was confirmed. The default sentence was also confirmed. Challenging those findings this Crl.R.P. is filed.

2. The first respondent filed a complaint alleging that the petitioner borrowed an amount of Rs.1,00,000/- from him. When he demanded repayment of the amount, Ext.P2 cheque was issued in discharge of that legally recoverable debt. When the cheque was presented

for collection it was dishonoured for want of sufficient funds in the account maintained by the petitioner with the bank. Notice demanding repayment of the amount was issued. The petitioner did not pay the amount in time.

3. The complainant gave evidence as PW1. PW1 deposed that the revision petitioner borrowed an amount of Rs. 1,00,000/- and issued Ext.P1 promissory note as well as Ext.P2 cheque. Though the petitioner raised a contention that the cheque was not signed by him, he did not adduce any evidence to substantiate that contention. So the finding of the courts below that Ext.P2 cheque was issued in discharge of a legally recoverable debt is correct and does not call for any interference. The evidence also shows that on receipt of the dishonour memo notice demanding repayment of the amount was issued but the petitioner did not repay the same. Complaint was filed after observing all formalities. So the finding of the court below that the petitioner is guilty of the offence punishable under Section 138 of the N.I.Act is correct and does not call for any interference. . The conviction imposed and the compensation awarded are also reasonable. But considering all aspects of the matter I am of the view that reasonable time can be given to the petitioner to pay of the compensation and to appear and receive the sentence.

4. In the result CrI.R.P. is disposed of in the following manner. The finding of the courts below that the petitioner is guilty of the offence punishable under Section 138 of the N.I. Act is confirmed. The conviction and sentence imposed on him are also confirmed. The quantum of compensation awarded and the default sentence imposed are also confirmed. The petitioner is given six months time from today to pay off the compensation and also to appear and receive the substantive sentence. In case the petitioner fails to comply with the condition it is open to the Magistrate to execute the sentence after the expiry of six months.

K.PADMANABHAN NAIR,JUDGE

es

